IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

OP.No. 23143 of 2002(E)

PETITIONER:

P.CHANDRASEKHARAN, AGED 54 YEARS,
S/O.M.KUNHUNNI NAIR, FULL TIME MENIAL,
SARVAJANA HIGH SCHOOL, PUTHUKODE, PALAKKAD
DISTRICT (RESIDING AT SHEEJA NIVAS, WEST THARA,
PUTHUCODE 678 687, PALAKKAD DISTRICT)

BY ADV. SRI.V.A.MUHAMMED

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT EDUCATIONAL OFFICER, PALAKKAD.

3. THE MANAGER, SARVAJANA HIGH SCHOOL, PUTHUCODE, PALAKKAD DISTRICT.

4. THE HEADMASTER, SARVAJANA HIGH SCHOOL PUTHUCODE, PALAKKAD DISTRICT.

5. THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH
G.P. SHRI.T.T.MUHAMOOD.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 7/09/2007, A/W. W.P.C. 34481/02 THE COURT ON 14.9.2007 DELIVERED THE FOLLOWING:

O.P.NO.23143/02.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE ORDER DTD.19.6.01.

P2. COPY OF THE ORDER DTD.22.5.00 BY R2.

P3. COPY OF THE ORDER DTD.17.2.01.

P4. COPY OF THE GOVT. ORDER DTD.26.4.02.

P5. COPY OF THE LETTER OF R4 DTD.17.5.02.

P6. COPY OF THE REQUEST DTD.7.2.02.

P7. COPY OF THE ORDER DTD.1.4.2002.

P8. COPY OF THE ORDER DTD.27.5.2002.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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O.P.No.23143 & 34481 of 2002

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Dated this the 14th day of September, 2007

J U D G M E N T

These two original petitions are filed by a Full Time Menial and the manager of the Sarvajana High School, Puthucode, respectively on the same subject matter. In O.P.No.23143/2002 the Full Time Menial of the school seeks reinstatement in service and promotion as Clerk with effect from 1.9.2002, in implementation of Exts.P1, P4 and P7 orders of the educational authorities. In O.P.No.34481/2002 the manager challenges Ext.P3 order which is same as Ext.P4 in the other original petition, whereby, the petitioner in O.P.No.23143/2002 was directed to be reinstated in service. At the outset it may be mentioned that the question of reinstatement does not arise at this point of time since the Full Time Menial, viz., the petitioner in O.P.No.23143/2002 has already attained the age of superannuation and therefore, the only relief that can be

granted, even if the writ petition is allowed, is to grant him monetary benefits.

2. The facts which gave rise to the competing claims of the two petitioners may be summarised as under:- Sri.P.Chandrasekharan , the petitioner in O.P.No.23143/2002 was appointed in the Sarvajana High School, Puthucode, as a Full Time Menial with effect from 18.7.1979. While he was so continuing, a leave vacancy of peon arose for the period from 1.8.97 to 30.9.1997. Although Sri.Chandrasekharan staked a claim for promotion to that post, the manager appointed Sri.Gokuldas, a fresh hand. On a complaint filed by Sri.Chandrasekharan before the D.E.O., the D.E.O. refused to approve the appointment of Sri.Gokuldas. The manager approached the Director of Public Instruction and the Government, challenging the refusal to approve the appointment of Sri.Gokuldas, which ultimately resulted in Ext.P1 order in O.P.No.23143/2002, whereby the Government upheld the rejection of approval of the appointment of the said Sri.Gokuldas. Sri.Chandrasekharan in his original petition alleges that on the

account of the above circumstances, the manager became ill-disposed towards him and to spite him suspended him from service with effect from 31.3.1998. However, the DEO found the suspension unsustainable and directed the manager to reinstate Sri.Chandrasekharan. The manager took up the matter in revision before the Government and the Government directed the DEO to conduct a further investigation in the matter. The 2nd respondent conducted a further investigation and again found that the suspension was without any basis and ordered reinstatement of the petitioner, by Ext.P2 order dated 22.5.2000. In spite of Ext.P2, the third respondent did not reinstate Sri.Chandrasekharan in service. Sri.Chandrasekharan, in his original petition further alleges that at the instance of the manager, the headmaster denied salary to the petitioner also. Again the 2nd respondent, by Ext.P3, directed the headmaster to release salary of Sri.Chandrasekharan. The same also was not complied with. The manager again filed O.P.No.21748/2001 challenging Ext.P1 order of the Government and this court directed the Government to consider the matter afresh after

hearing the manager. Accordingly, the Government after hearing all parties, passed Ext.P4 order again directing the manager to reinstate Sri.Chandrasekharan in service. However, the manager was recalcitrant in the matter and refused to reinstate Sri.Chandrasekharan.

3. In the meanwhile a regular vacancy of peon arose with effect from 1.3.98. According to Sri.Chandrasekharan, he is entitled to be promoted to that post and was not promoted only because of the recalcitrant attitude of the manager. On these averments, Sri.Chandrasekharan in his original petition seeks the following reliefs;

> "(a) issue a writ of mandamus or other appropriate writ order or direction commanding the 3rd Respondent to reinstate the Petitioner in service and promote him as Clerk w.e.f. 1-9-2002 in the light of Exhibits P-1, P-4 and P-7 orders forthwith.
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> (b) direct the Respondents to grant notional promotion to the Petitioner in the leave vacancy of Peon w.e.f. 1-8-1997 to 30-9-1997, to the regular vacancy of Peon w.e.f. 1-3-1998 and in the leave vacancy of Clerk w.e.f. 2-2-2002 to 6-4-2002 with all consequential benefits.
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> (c) direct Respondents 1, 2 and 5 to take action against the 3rd and 4th Respondents for disobedience to Exhibits P-2, P-3 and P-7 orders including disqualification of the Manager under Rule 7 of Chapter III K.E.R."

4. In O.P.No.34481/2002, as mentioned earlier, the

manager of the school challenges the order passed by the Government dated 26.4.2002 directing the manager to reinstate Sri.Chandrasekharan in service. According to him, Sri.Chandrasekharan indulged in riotous behaviour in an intoxicated condition within the premises of the school, the last instance of such behaviour being on 28.3.1998. The manager alleges that it is because of the said misconduct that Sri.Chandrasekharan was suspended from service. He would contend that the DEO passed the order of reinstatement without taking into account the real facts of the case. The contention is that, by Ext.P1 order dated 9.8.99, the Government had permitted the manager to keep the employee under suspension till completion of the investigation and therefore, the direction in Ext.P3 order to reinstate Sri.Chandrasekharan, even before the completion of the investigation militates against Ext.P1 order and therefore, is liable to be quashed.

5. I have considered the rival contentions in detail.

6. I am not at all satisfied with the conduct of the manager and I am of opinion that the same amounts to willful disobedience to the orders of the educational authorities which

the manager is bound to comply with until the same is reversed or modified by authorities under the Kerala Education Rules. It is a fact that there are orders by the competent authorities under the Kerala Education Rules to reinstate Sri.Chandrasekharan in service. Even in the original petition filed by the manager he was not able to obtain a stay of those orders ordering reinstatement of Sri.Chandrasekharan. That being so, the action of the manager in refusing to reinstate Sri.Chandrasekharan is deliberate defiance of the lawful orders of the educational authorities for which he is liable to be proceeded against even for removal from the managership. In fact it is submitted at the bar that the petitioner in O.P.No.34481/2002 Sri.P.K.Krishnaswamy has since been removed from the managership of the school in question.

7. Further, I am not also satisfied about the reasons put forward by the manager for challenging the orders reinstating the employee. At the time of considering the validity of the suspension beyond a period of 15 days, the question of full-fledged enquiry does not arise at all. At that time, what the DEO

is expected to do is to conduct a preliminary investigation to ascertain whether there is a prima facie case for such continuance of suspension. This is exactly what is provided in Sub Rule (8) of Rule 67 of Chapter XIVA of the Kerala Education Rules. The question of detailed enquiry arises only after serving a memo of charges on the employee based on which alone the DEO can conduct enquiry. In the order of the Government, which the manager challenges itself, it has been specifically noted that no charge memo has been issued to the employee and disciplinary action has not even started. The manager could not controvert the contention of the employee that till his age of superannuation no memo of charges was issued to him. The DEO, on preliminary investigation, found that no instances pointed out by the manger as reasons for suspending the employee had ever taken place within the premises of the school or during the course of the duty. The manager was not able to place before me any material whatsoever to substantiate his contentions. From the above, it is abundantly clear that the manager was acting on ulterior motives with the sole intention to keep the employee out of service stating some reason or other. In any event, as I have held, at

least after the Government directed the manager to reinstate the employee and he failed to obtain any stay of that direction from this court, the manager was duty bound to reinstate the employee in service, which he had steadfastly refused to do. He also failed to issue any memo of charges to the employee which further compounds his misdemeanor. Now that the employee has attained the age of superannuation, no further disciplinary action also can be taken against him, as a result of which, the employee has become entitled to full salary for the period during which he was kept out of service by the manager. Such devious action of the management is further compounded by the fact that he has tried to deliberately mislead this court by claiming in the counter affidavit that the Government had subsequently approved the appointment of Sri.Gokuldas as a Clerk to which the employee had claimed a right of promotion by producing Ext.R3 (a). On a reading of Ext.R3(a), it is abundantly clear that the Government also upheld the orders of the DEO refusing to approve the appointment of Sri.Gokuldas taking note of the superior claim of Sri.Chandrasekharan for promotion under Rule 43 of Chapter XIV-A of KER. What the Government has done in

Ext.R3(a) is to direct the District Educational Officer to approve the appointment of Sri.Gokuldas in any post of non-teaching staff to which he is eligible, provided there is an established vacancy and the manager issues an order to that effect as per the provisions of the KER. That direction was issued after upholding the orders of the DEO refusing to approve his appointment to the post on the ground that Sri.Chandrasekharan, a Rule 43 claimant, had superior claim to be appointed to that post.

8. In view of this cantankerous attitude of the manager, I am of opinion that he personally, should be saddled with the liability to reimburse to the Government the amounts due to Sri.P.Chandrasekharan as salary and allowances for the period during which he was kept out of service because of his illegal action. In the above circumstances, O.P.No.23143/2002 is disposed of with the following directions:

(a) The DEO shall pass appropriate orders sanctioning full salary and allowances and other benefits due to Sri.P.Chandrasekharan for the period he was kept out of service pursuant to the suspension order issued by the manager from the date of suspension till his date of

superannuation.

(b) The DEO shall consider whether Sri.P.Chandrasekharan is entitled to be promoted to the leave vacancy of Peon on 1.8.97 to 30.9.97 and the regular vacancy with effect from 1.3.98 and to the leave vacancy of Clerk w.e.f. 2.2.2002 to 6.4.2002, and pass appropriate orders directing the manager to forward orders notionally promoting him in those vacancies, if Sri.Chandrasekharan was legally entitled to be so promoted. If the DEO finds that Sri.Chandrasekharan is so entitled, the balance amounts payable as salary to Sri.Chandrasekharan in those posts also, would be liable to be reimbursed by Sri.P.K.Krishnaswamy, Manager, personally. The 2nd respondent shall take steps to disburse the amounts due to Sri.Chandrasekharan as above in the first instance and recover the same from Sri.P.K.Krishnaswamy, the then manager of the school.

(c) The retirement benefits of Sri.P.Chandrasekharan shall also be computed and disbursed to him accordingly

(d) The entire process as above shall be completed within

a period of three months from the date of receipt of a copy of this judgment.

9. O.P.No.34481/2002 is dismissed.

10. In both the original petitions Sri.P.K.Krishnaswamy, the petitioner in O.P.No.34481/2002, shall personally pay costs both to Sri.P.Chandrasekharan and the State. The costs payable to Sri.Chandrasekharan is quantified at Rs.10,000/- and that payable to the State is quantified at Rs.5,000/-. The same shall also be recovered from Sri.P.K.Krishnaswamy along with other amounts due and costs payable to Sri.P.Chandrasekharan shall be paid to him.

Interlocutory applications stand closed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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O.P.No.23143 &

34481 of 2002

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J U D G M E N T

14th September, 2007